RESPONSIBILITY FOR REMOTE CONSEQUENCES OF ACTS AND OMISSIONS.

THE RESPONSIBILITY OF PARTIES FOR SECONDARY OR REMOTE CONSEQUENCES OF ACTS OR OMISSIONS; BEING A COMMENTARY UPON THE IMPORT AND APPLICATION OF THE MAXIM, *In jure non remota causa, sed proxima spectatur.*[1]

THE fear lest we might have been misapprehended by some in what we said in regard to the force and applicability of the maxim, *In jure non remota causa, sed proxima spectatur*, to legal questions, has induced us to re-examine our views, and restate them more in detail than we did in our former comments upon it. We had no purpose of intimating any opinion against the soundness of the maxim, in cases where it was strictly applicable. In its literal import it has reference indeed to *causes* alone and not to *consequences*. And although these may be synonymous, in common acceptation, they are not so in the form and manner of investigation, the one calling us to look back and the other forward. In looking at causes, the law, in many instances, will regard only the proximate cause of the act, while science and philosophy may curiously pry into remote or secondary causes. If, in a trial for murder, the accused inflicted a mortal wound upon the deceased, in cool blood, without any legal excuse or justification, the law pronounces it murder, and accordingly requires the conviction and punishment of the offender. But speculation and philosophy may look into the antecedent causes, leading up to the final act. It may find some apology or palliation for the offence, short of a legal excuse, in the hereditary mental taint or infirmity of the ancestral

[1] We are reminded by a correspondent that we were in error, *ante*, Vol. XXI. p. 560, in supposing that the maxim, *In jure non remota causa, sed proxima spectatur*, was not contained in Broom's Legal Maxims, which is another proof of the folly of trusting to an imperfect index, as most of the earlier ones to law books were. It was not however very important whether the maxim was found there or not, except in the view of our correspondent, who seemed to suppose that fact formed the basis of all our strictures in regard to the tendency of late to greatly overwork that particular maxim, in attempts to solve legal mysteries. In that view, it was but natural, that our correspondent should say, that our strictures, which were merely incidental to the main purpose of the note, might possibly prove misleading to some, who, for various reasons, might not be able always to consult the sources of authority for all the propositions made by law writers.

lineage of the accused, or in some neglect or abuse of his education and training; or it may search out some extenuation of the the act, in the provocation of the slain. He may have been a seducer, or of bad morals generally, or possibly an offender against some cherished policy, institution, or party in society: a polygamist, or a pirate, making war upon mankind generally, and may thus, in the estimation of current opinion, have deserved his fate. But the law and stern justice shuts its eye to all this, and demands its vindication by the death of the offender. These illustrations, showing how the law, in looking into the causes of actions, will not consent to go behind the very proximate one, might be carried much further, showing fully the application of the maxim, in its literal and strict sense, to legal subjects. But they are too numerous to require repetition.

Lord BACON'S paraphrase of the maxim shows fully how the author regarded its application to the law. "It were infinite for the law to consider the causes of causes and their impulsions, one of another; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree."

But the maxim in its application to *consequences* has received a much more limited application, the law holding parties responsible for the remote consequences of their conduct in many instances, and especially where such secondary results might naturally have been anticipated, as the not improbable consequences of the primary act. Thus in the very recent case of *Lawrence* v. *Jenkins*, 21 W. R. 577; L. R. 8 Q. B. 274, the defendant was held responsible for the loss of plaintiff's two cows, by a consequence very remote from the primary act, ultimately resulting in the death of the animals. The cows were depasturing in the plaintiff's field, adjoining defendant's woodland. The two fields were separated by a fence upon defendant's land, but which he was bound to maintain. Defendant sold timber or wood growing upon his land to one Higgins. He, in cutting it, felled a beech tree across the fence, making a gap sufficient to allow the plaintiff's cows to pass into the defendant's close, where they ate of the foliage of a laurel tree subsequently felled by Higgins, which, being poisonous, caused the death of the cows. The court held the defendant bound to keep the fence constantly in repair, and not excused by reason of the temporary break caused in the manner before stated; and that

the consequence of the non-repair being the ultimate loss of the cows, the damage was not too remote to be recovered. The case is similar to *Vicars* v. *Wilcox*, 8 East 1, where the plaintiff's horses escaped into defendant's close by reason of his not repairing his fences, and were there killed by the falling of a haystack; and he was held responsible. The whole range of the action on the case is based upon consequential damages, where the primary act caused no injury. The famous case of *Scott* v. *Shepherd*, 2 Wm. Bl. 892, and Smith's note, 1 Lead. Cas. 210, turns upon the distinction between the direct and immediate, and the remote consequences of an act; the defendant being held responsible in the former case, in trespass, and in the latter in case; but no question being made that he is equally responsible in both cases, which he could not be, upon any strict application of the maxim we are discussing, both as to the proximate and remote *consequences* of an act. The very first illustration used by Mr. Smith in his note to the case of *Scott* v. *Shepherd*, would have no application, if the defendant were only responsible for the immediate consequences of his act, by leaving a log in the streets, over which the plaintiff subsequently fell and suffered injury. Instead of showing the distinction, as is intended, between responsibility in trespass and case, it would show the difference between responsibility to an action, and no responsibility at all. The attempt of some of the courts to distinguish between the responsibility of the party, who negligently sets fire, for the first building burned, and those subsequently fired by communication from the first, holding him only responsible for the first and not for those subsequently burned, first opened our eyes to the conviction that we were all falling into or liable to fall into an error in the application of the maxim in question: *Ryan* v. *N. Y. Central Railway*, 35 N. Y. 210; *Pennsylvania Ry.* v. *Kerr*, 62 Penn. St. 353. But these cases have not been countenanced by the decisions in other states: *Hart* v. *Western Ry.*, 13 Met. 99; *Safford* v. *Boston & Maine Ry.*, 103 Mass. 583; *Feut* v. *T. P. & W. Ry.*, 4 Chicago Legal News 326; 1 Redf. Am. Ry. Cases 358. Broom, Legal Maxims 165, says the maxim is "usually cited with reference to that peculiar branch of the law, which concerns marine insurance." The learned author cites no cases to illustrate its application, except from this branch of the law, with the exception of two cases from the law of carriers, *Siordet* v. *Hall*, 4 Bing 607; *Davis* v. *Gar-*

rett, 6 Bing. 716; and he says expressly that "it has no application to cases founded in fraud or covin;" or to criminal causes.

We may here find, perhaps, in some sense, the proper limit of the application of this maxim in estimating consequential or remote damages, as the result of an unlawful act. Where the defendant is guilty of no moral wrong, as in the case of failure to perform a contract, or the exercise of a wrongful act of dominion over the property, or estate of another, through innocent misapprehension or mistake, the damages will be limited to the immediate and direct result of the act or omission, and this rule is applied with great strictness in cases of marine insurance. For instance in *Cator* v. *The Great Western Ins. Co. of New York*, 21 W. R. 850, Law Rep. 8 C. P. 552, where the policy stipulated for the payment of all damages "caused by the actual contact of sea-water," some of the cargo, being tea, was damaged by such cause, and that portion being separated from the portion not damaged, it was found the latter could not be sold in the market for its real value, by reason of it being known that the damaged portion had been separated from it, and the consequent apprehension that some deteriorations had also occurred in the whole cargo. But the court held the insurers not responsible for such consequence. And even in regard to insurance cases the application of the rule in regard to remote or proximate consequences is very different, in different cases, some courts enforcing it with great strictness, and others allowing considerable relaxation. For instance, in *Peters* v. *The Warren Ins. Co.*, 3 Sumner 389, s. c. 14 Pet. 99, it was held that money paid, in pursuance of a decree of a foreign admiralty court, for damage done another vessel by an accidental collision at sea, was damage caused by the perils of the sea. But the contrary was held in *De Vaux* v. *Salvador*, 4 Ad. & E. 420; and the later American cases seem tending to the latter result: *Gen'l Mutual Ins. Co.* v. *Sherwood*, 14 How. 352; *Matthews* v. *Howard Ins. Co.*, 11 N. Y. 9.

But there are some cases of contract where damages for the natural and known consequences of a mere breach of contract, or duty, have been allowed to be recovered. As where the plaintiff lost the use of his mill by reason of machinery being defectively set up in it: *Clifford* v. *Richardson*, 18 Vt. 620. But the loss of the use of a mill, by reason of a joint owner not repairing the dam, cannot be recovered, as the plaintiff might himself repair it.

Thompson v. *Shattuck*, 2 Met. 615. And in general it may be affirmed, that consequential damages are not recoverable for mere breach of contract, or when there is no special fault or cause of blame attaching to the defendant's conduct.

But in cases of wilful or negligent injury, the plaintiff is commonly allowed to recover all such consequential damages, as were within the knowledge and contemplation of the defendant at the time of the act or omission: *Greenland* v. *Chaplin*, 5 Exch. 243. In *Regby* v. *Hewitt*, Id. 240, the rule is thus stated by POLLOCK, C. B. After expressing doubt, whether the defendant can be held responsible for all the possible consequences of his negligence, the learned judge adds, "of this I am quite clear, that every person who does wrong, is at least responsible for all the mischievous consequences that may reasonably be expected to result under ordinary circumstances, from such misconduct." This seems to be the present most approved rule upon the subject. This rule was applied in *Crouch* v. *Great Northern Ry.*, 11 Exch. 742, where a carrier acted wilfully, with a view to injure the plaintiff's business. So also in *Mullett* v. *Mason*, L. R. 1 C. P. 559, where the plaintiff bought a cow, upon a warranty of soundness and that she had been raised in England, and she proved to be a foreign cow, and infected his herd, whereby he lost other cows, it was held he might recover such consequential damage. And consequential damages were allowed to be recovered in *The James Seddon*, L. R. 1 Adm. & Eccl. 62; s. c. 12 Jur. N. S. 609. But in *Gee* v. *L. & Y. Ry.*, 6 H. & N. 211, consequential damages were denied on the authority of *Hadley* v. *Baxendale*, 9 Exch. 341, both of which cases were against carriers for not delivering goods in time, and for consequential damages during the interval of delay. But in an action for not delivering machinery in time, the value of the use of the machinery during the period of its improper detention was allowed to be recovered: *Priestly* v. *N. J. & C. Ry.*, 26 Ill. 205.

We have thus shown, we trust, that the maxim in question was never regarded as of much practical force, in its application to the law; (in other words, in the particular form of its announcement by Lord BACON, Bac. Maxims Reg. 1;) and that its adoption was confined to the law of insurance, mainly, until very recent period; and that at the present day the authorities will not justify its strict application beyond the matter of contracts and nominal

torts, when there is no proof of carelessness or wrong intent. And even within these narrow limits, the conflict of authority as to the extent of the application of the maxim would suggest extreme caution in regard to placing much reliance upon it. So that upon the whole, we may safely conclude that those consequences which the law treats as too remote for consideration in estimating damages, must be such as the defendant had no just ground to expect would flow from his act—in other words—such as were, upon the basis of his knowledge, rather accidental than natural, or ordinary. We shall not be expected to discuss the much vexed question, what amounts to an accident, or what damages are natural and what accidental. The term, with reference to accident policies, has been defined as "any event which takes place without the foresight or expectation of the person acted upon, or affected by the event:" WITHEY, J., in *Ripley* v. *Ry. Passenger Assurance Co.*, 2 Bigelow Ins. Cas. 738; *Providence Life Ins. Co.* v. *Martin*, 32 Md. 310. The cases are considerably numerous where this definition is substantially confirmed. And as it so nearly coincides with the rule before stated, we shall not say more, trusting that we have sufficiently removed any ground of misapprehending what we before said upon the force and application of the maxim.

I. F. R.

RECENT AMERICAN DECISIONS.

Supreme Court of Errors of Connecticut.

CLARK AND WIFE *v.* GILBERT.[1]

A married woman to whom possession of land is delivered under a parol gift, and who occupies the land uninterruptedly, adversely and exclusively as her own for fifteen years, thereby acquires a complete title in herself, subject to an estate by curtesy in her husband, where the husband, although living with her, claims no independent, exclusive occupation in himself.

Possession taken under a parol gift is adverse in the donee against the donor, and if continued for fifteen years perfects the title of the donee as against the donor. The donor in such case not only knows that the possession is adverse, but intends it to be so, and there is no occasion for any notoriety. Notoriety is only important where the adverse character of the possession is to be brought home to the owner by presumption.

BILL in equity, praying for a decree vesting the title to certain land in Jane E. Clark, one of the petitioners; brought to the Su-

[1] Mr. HOOKER, the reporter, will accept our thanks for this case, and some others. EDS. AM. LAW. REG.